Supreme Court, U.S.
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No. 00-1302

In The

Supreme Court of the United States

STATE OF NEBRASKA,

Petitioner,

v.

JEREMY SHEETS,

Respondent.

On Petition For A Writ Of Certiorari To The Nebraska Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Submitted by:

J. WILLIAM GALLUP, #11425
Counsel of Record
GALLUP & SCHAEFER
1001 Farnam Street
Omaha, NE 68102
(402) 341-0700

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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CAPITAL CASE

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STATEMENT OF THE CASE

Bill Jadlowski was a sergeant, employed by the City of Omaha, and he had been involved in the investigation into the death of Kenyatta Bush. (Volume I, 2:5-16). Jadlowski interviewed Adam Barnett after Barnett had been arrested and placed in custody at Central Police Station. (Volume I, 17:5-25). This was the first interview of Barnett while Barnett was in police custody and lasted approximately one hour. (Volume I, 18:1-8). During this initial interview Barnett denied any involvement in the killing of Bush but claimed that he had been told by Jeremy Sheets that Sheets had killed Bush. (Volume I, 18:9-16). That interview was concluded when Barnett demanded an attorney and an attorney was subsequently appointed to represent Barnett. (Volume I, 18:17-25; 19: 1-25). Barnett was formally booked on a homicide charge shortly after an attorney had been appointed to represent him and after the first statement given to Jadlowski. (Volume I, 21:19-23). Subsequent to the appointment of an attorney for Barnett, the attorney contacted Jadlowski and advised Jadlowski that Barnett wished to make a second statement to police. (Volume I, 23:14-15). A second statement from Barnett was taken on September 28, 1996. That statement was cut off by the attorney for Barnett. (Volume I, 23:16-25). After the interview had been terminated the attorney for Barnett said his client wanted to make a statement, but he also wanted to know what was going to happen to him. At that time the county attorney was consulted and brought into the discussion. (Volume I, 25:9-21). The county attorney entered into an agreement with Barnett whereby Barnett would be allowed to plead guilty to a charge of second degree murder in return for

giving a statement and testifying truthfully at any trial (Volume I, 27:1-18). Following the plea agreement, Barnett's attorney indicated that Barnett was willing to make a statement. (Volume I, 28:6-16). Barnett gave a tape-recorded statement after entering into the plea agreement. (Volume I, 30:1-10). Barnett committed suicide after giving the tape-recorded statement. (Volume I, 33:7-10). Jadlowski interviewed Barnett a total of three times at Central Police Headquarters. (Volume IV, 805:10-15). In the second interview of Barnett conducted by Jadlowski and other detectives, Barnett stated that he and Sheets had come in contact with Bush about 2:30 in the afternoon. (Volume III, 753:5-22). In that statement Barnett stated that Bush was asked to get into the car for purposes of going out to party and smoke marijuana and that Bush had gotten into the vehicle willingly upon the invitation. (Volume III, 754:11-18). Barnett also stated that Sheets had asked Bush if she liked white meat and that Bush responded she would try it. (Volume III, 755:22-25; 756:1-2). According to this second statement the parties then drove to Dodge Park. After getting to Dodge Park the three got out of the vehicle. (Volume III, 758:6-17). Barnett then told Jadlowski that he observed Sheets stabbing Bush 10-20 times. (Volume III, 759:14-17). Barnett made no mention of either rape or sexual assault and, according to Barnett in this statement, he was standing when he observed the stabbing. (Volume III, 760:2-10). Barnett stated that after the killing the body was placed in a trash bag. The trash bag was placed in the trunk of the car and they left Dodge Park. (Volume III, 761:7-25). After leaving the park the body was taken to another area and deposited somewhere off the road. (Volume III, 762:

1-25). During this second statement given to Jadlowski, Barnett started to cry and his attorney stopped the interview. While Barnett was crying he told Jadlowski: "I wasn't there." (Volume III, 763:20-25; 764:1-8). After telling Jadlowski that he was not there, Jadlowski went over to Barnett, put his hand on his shoulder, and asked Barnett: "What are you trying to tell me?" Barnett responded for a second time that he was not there. (Volume III, 764:7-17). Jadlowski found discrepancies in the first interview with Barnett and the second interview with Barnett. (Volume III, 766:4-25). Jadlowski also found discrepancies between the things Barnett said in his second interview at the police station and the statement he made to Jason LaNoue. (Volume III, 766:20-25; 767:1-4). The discrepancy consisted of the fact that in the interview on Saturday Barnett did not admit any involvement in the murder. He simply said in that interview that he was present and helped hide the body after the killing. (Volume III, 767:10-18). Another discrepancy was the fact that Barnett claimed that the girl had been picked up voluntarily at 2:30 in the afternoon when the detectives knew she had disappeared in the morning. (Volume III, 767:19-25; 768:1-9). The detectives also knew that Bush would never have gotten into a car with a stranger. (Volume III, 769:1-6). The second interview that Jadlowski conducted with Barnett on Saturday afternoon was clearly a different account than he had acquired on Saturday night when he got Barnett's confession. (Volume III, 770:15-18). Barnett never explained to Jadlowksi any of the inconsistencies in his statement. (Volume III, 771:1-25; 772:2-25; 773:1-25). Jadlowski concluded, after the second interview of Barnett, that Barnett was not being honest in

the second interview and that Barnett was not telling the truth in the second interview. (Volume III, 774:11-25; 775:1-10). Jadlowski never asked Barnett why, in one of his statements to Jadlowski, he said Sheets stabbed the woman 10-20 times in the chest, and in his other statement he said Sheets stabbed her only 3-4 times in the chest. (Volume III, 781:1-10). Jadlowski admitted that the two statements were very significant, but he did not question the discrepancy because he knew from the autopsy report that the woman had not been stabbed 10-20 times and that Barnett had not been accurate at that point. (Volume II, 781:11-18). Jadlowski again did not ask Barnett to explain the discrepancy in his statement when he first stated there had not been a sexual assault and when he later said there had been a sexual assault. (Volume III, 782:8-15). Jadlowski said he never asked Barnett to explain the discrepancy because it was obvious to Jadlowski that Barnett was not being truthful. (Volume III, 782:17-22).

Jadlowski admitted there was no physical evidence to connect Respondent to the crime. (Volume III, 794:11-21; 795:1-3).

Detective Jadlowski testified that he interviewed Barnett three times and that Barnett gave three different statements. He testified that every time he talked to Barnett, Barnett gave a different account. Jadlowski also admitted that Barnett gave different accounts to his girlfriend, Chrissy, gave a different account to Richelle LaNoue and that he gave different accounts at different times to virtually everyone he talked to. (Volume IV, 830:1-25).

The State of Nebraska had two tapes prepared, exhibits 46 and 47, which were an edited version of the original taped statement from Barnett. (Volume II, 473: 17-23). The tapes were offered by the prosecution. (Volume II, 474:12-14). The exhibits were objected to by counsel for Respondent on the grounds that they constituted hearsay and violated the Confrontation Clause. The Court overruled the objection and received the exhibits. (Volume II, 475:3-19). The exhibits were then played to the jury.

Barnett's taped statement commences in Volume II, 478:1-527:6). The statement commences with Barnett stating that he and Respondent had been cruising around all night tripping acid, piggybacking them. (Volume II, 480:22-25). He stated that they drove to North High about 10:00 in the morning where they kidnapped a girl and took her to Dodge Park where they decided they were going to rape her. (Volume II, 481:4-25). Barnett stated that Respondent was having intercourse with the victim, beating her with his fists, from her waist to her head, while Barnett was not doing anything. (Volume II, 496:20-25; 497:1-16). The victim appeared to be unconscious. After the victim was unconscious Barnett stated that the Respondent took his knife and stabbed the victim after making the statement: "I am going to kill this nigger bitch. You got a problem with that?" (Volume II, 497:15-25; 498:1-16). According to Barnett, Respondent stabbed the victim 3-4 times. (Volume II, 500:10-13). The Respondent was having intercourse with the victim while he was stabbing her. (Volume II, 500:22-25). Barnett stated that the victim was stabbed between her "boob area to neck area". (Volume II, 501:1-8).

The interrogation of Barnett started with Detective Jadlowski asking a leading question: "Adam, I want to ask you a pointed question right out of the gate. Is Kenyatta Bush dead because she's black?" (Volume II, 484:17-19). Again, Jadlowski asked Barnett another leading question: "Was there any conversation between you and Jeremy in the vehicle before you picked her up as to you guys picking up a black girl specifically?" (Volume II, 485:1-6). According to Barnett, after the killing the body was placed in a garbage bag and it was deposited in another location. (Volume II, 504:19-25; 50-5:1-25). After the body had been moved Barnett and Respondent went to Barnett's house where they washed out the trunk of the car. (Volume II, 515:1-25). In the taped statement Barnett admitted to Jadlowski that he had not been truthful with other people he had discussed the matter with. (Volume II, 520:9-20). Barnett also admitted to Jadlowski that he had told his girlfriend, Chrissy, that everything he had said about the killing had not been true. (Volume II, 526:7-12).

Nancy Sheets is the mother of Jeremy Sheets and she went to Council Bluffs, Iowa on September 23, 1992 to look at a Camero automobile that the Respondent was planning to buy. (Volume IV, 838:15-22). She went back to Council Bluffs on the 24th and 25th of September. The Respondent did not have a car prior to September 24, 1992. (Volume IV, 841: 21-25). Ms. Sheets was positive that her son purchased the car on September 24, 1992 because she purchased her new car the following day. (Volume IV, 842:1-14).

Mary Barnett is the mother of Adam Barnett. (Volume IV, 846:8-10). She testified that she visited her son every

Wednesday afternoon while he was in jail in Washington County. (Volume IV, 846:20-25). She also talked to her son every evening on the telephone while he was in jail. (Volume IV, 847:1-4). Adam Barnett told his mother in her visits and in her telephone conversations with him that he was not present when Bush was killed and it was just a drunk thing that started at a party. (Volume IV, 847:5-8). Ms. Barnett testified that she told her son to tell the truth and everything would be alright and her son responded to that advice by saying he was going to go to the preliminary hearing and get up and would tell them the truth, exactly what happened, and that they were not involved and because he could not send anybody else down for a drunken, stupid thing he started and could not get out of. (Volume IV. 847:14-25; 848:1-4). Ms. Barnett testified that her son's specific words were: "He said fuck it. I am going to go to the preliminary hearing and I am going to tell them the truth." (Volume IV, 848:7-9). Present at this admission of Barnett was his girlfriend, Chrissy, the mother of his child. (Volume IV, 848:10-15). Ms. Barnett testified that Respondent and her son were employed at Kentucky Fried Chicken in September, 1992 and worked evenings ninety-nine percent of the time. (Volume 848:22-25; 849:1-3). She also testified that Respondent did not have a car at that time and usually got to work by riding with either Jason LaNoue or Josh Tyson. (Volume IV, 849:7-15). Ms. Barnett testified that her son's reputation for truthfulness was terrible. (Volume IV, 850:23-25; 851:1-3).

Christine Kelly was the mother of Adam Barnett's child. (Volume IV, 860:14-25). She communicated with Barnett after he had been placed in jail both by telephone

and actual visits at the jail. (Volume IV, 863:19-25; 864:1-6). In all of her discussions with Adam Barnett after he had been placed in jail, he told Chrissy they had not done it. (Volume IV, 864:7-11). Chrissy testified that she had asked Barnett why he had never explained to the police that it was all a lie and he told her that he had told them it was all a lie, that it was just a bunch of drunk bull, and they would not believe him. (Volume IV, 865:7-18). Barnett told Chrissy that when he got to trial he was going to tell the truth and the truth was that they did not do it. (Volume IV, 865:19-24). Chrissy further testified that Barnett's reputation in the community for truthfulness was bad and that he had a history of telling tall tales. (Volume IV, 866:1-5). Chrissy admitted in her testimony that she had had a sexual relationship at one time with the Respondent and that Barnett had gotten very disturbed and that Chrissy had tried to put all the blame on Respondent (Volume IV, 866:10-25). Chrissy testified that Barnett left a suicide note in which he stated: "they did not do it" (Volume 870:20-25; 871:1-5).

Brian Hunkins testified that he was in the Washington County Jail and was a cell mate with Adam Barnett. (Volume III, 700:14-25). He testified that his cell mate, Barnett, was preparing to go to Court to testify in the case of *State v. Sheets*. (Volume III, 701:13-23). Hunkins testified that Barnett told him that neither he nor Sheets had any involvement in the Bush murder. (Volume III, 701:24-25; 702:1-4). Hunkins testified that Barnett said he was going to try to clear the matter up and that he had made the story up to impress some people at a party. (Volume III, 702:8-11). It was after that conversation that he found Barnett hanging in his cell. The suicide was

shortly after the statement Barnett made to Hunkins. (Volume III, 702:10-23). Hunkins testified he had told the authorities the same thing prior to his testimony at trial. (Volume III, 703:6-8).

Kay Sheets is the wife of Respondent and she and Respondent were living in Maine where he was serving in the Navy. (Volume III, 729:5-21). They were living in Maine at the time he was arrested there. (Volume III, 730:3-7). Mrs. Sheets testified that she received a telephone call from Barnett from the Washington County Jail and she had a conversation with Barnett that lasted about fifteen minutes. In that conversation Barnett told her that he hoped she did not hate him because he had ruined Respondent's life and Mrs. Sheets' life and he had told her that he had just been bullshitting and that nothing he had said was true. (Volume III, 732:20-25 733:1-25; 734:1-4).

REASONS FOR OPPOSING THE WRIT

WHETHER THE DECISION OF THE NEBRASKA SUPREME COURT CORRECTLY APPLIED THE TEACHINGS OF *LILLY v. VIRGINIA*, 527 U.S. 116, 119 S.Ct. 1887, 144 L. Ed. 2d 117 (1999) TO RESPONDENT.

ARGUMENT

Respondent was convicted of capital murder and sentenced to death in the electric chair. The only evidence linking the Respondent with the crime was a statement of an alleged accomplice made while in custody. When the alleged accomplice died prior to trial, the statement was

offered and received as an exception to the hearsay rule on the grounds that it was a statement against penal interest. Objections to the offer were made on the grounds that the statement violated the Respondent's right to confrontation under the Sixth Amendment.

After Respondent's case had been argued before the Nebraska Supreme Court, the Petitioner asked that Court to postpone its decision until after this Court had decided *Lilly*, supra, which was awaiting oral argument at the time Respondent's case had been taken under advisement by the Nebraska Supreme Court. The Nebraska Supreme Court complied with the request and withheld its opinion until after *Lilly* had been decided.

The Petitioner, after the decision in *Lilly* was announced, asked the Nebraska Supreme Court for permission to write a supplementary brief explaining the meaning of *Lilly*. The Nebraska Supreme Court granted the request, so Petitioner had an opportunity to present the same arguments to the Nebraska Supreme Court that it now makes to this Court in its petition for a writ of certiorari.

This Court need only read the opinion of the Nebraska Supreme Court in order to determine whether it understood the teachings of *Lilly*. The opinion could have been written by Diogenes, judging from its clarity.

The Nebraska Supreme Court reiterated this Court's often quoted rule that a statement made to police by an alleged accomplice which incriminates another person is presumptively unreliable. *Lilly*, of course, recognized this rule.

Petitioner ignores the important fact that the alleged accomplice, Barnett, recanted at least *four times*.

Petitioner, stating a desire to discuss how the facts demonstrate the reliability of Barnett's taped statement, totally ignores this matter of recanting by Barnett because it can't reconcile it with reliability. Like a politician when asked a difficult question, the Petitioner simply says nothing. Since Petitioner seems determined to demonstrate the reliability of the taped statement of Barnett, the Court should look at the facts the Petitioner chooses to ignore in assessing that reliability. First, Petitioner states that Barnett never shifted the blame to Sheets. Petitioner must suffer from astigmatism, because the record shows that, according to Barnett, Sheets dragged the girl into the car; Sheets beat the girl; Sheets raped the girl and Sheets killed the girl. Barnett was just there. There was almost a total shifting of blame to Sheets. The homicide, according to Barnett, was blamed exclusively upon Sheets. To say that Barnett made no attempt to exculpate himself is to ignore the record.

If one wishes to question the reliability of Barnett's statement, one must note that the final statement, the one received into evidence, was the *third* statement taken from Barnett. The first two were all different, and at the conclusion of each of them, Barnett stated: "I wasn't there." Following the second statement and before making a third statement, the attorney for Barnett said his client wanted to know what was going to happen to him. At that time the County Attorney appeared and agreed to let Barnett plead to a charge of second degree murder in return for giving a statement. (Vol.I, 27:1-18) The third and final statement was then recorded. If asking for a

deal prior to making a statement and getting that deal does not raise serious questions about the statement's reliability, nothing will. The statement was purchased by the State.

None of the above is mentioned by Petitioner in its review of the "facts". If the statements in *Lilly* were untrustworthy, *a fortiori* they are in this case.

Lilly wasn't hard to understand. The decision reversing the Virginia conviction was unanimous. Although four concurring opinions provided differing explanations about how other cases might be decided, there was complete agreement that the prosecution could not use a custodial confession that inculpated the defendant solely by showing that the non-testifying accomplice had inculpated himself in other parts of the confession.

Nebraska isn't the only jurisdiction that understood the meaning of *Lilly*. In the first year after the decision, the lower courts have reversed or vacated ten convictions in which a trial Court had admitted an accusatory confession of an accomplice on the ground the confession was a statement against penal interest. One of the cases was *Lilly* itself, on remand, after the lower Court found the constitutional error was not harmless. Six other convictions were also murder or capital murder convictions, two involved non-homicide shootings, and one was a drug prosecution. The cases apply *Lilly's* holding that the hearsay exception for statements against penal interest is not sufficient to overcome a confrontation objection. The cases are: *United States v. Gomez*, 191 F.3d 1214 (10th Cir. 1999); *Bulls v. Jones*, 86 F. Supp. 2d 746 (E.D. Mich. 2000) (habeas corpus); *People v. Farrell*, 2000 WL 177685 (Col. Ct.

of App. 2000) (not released for publication); *Barrow v. State*, 749 A.2d 1137 (App. Ct. of Ill. 1999); *People v. Quick*, 720 N.E. 2d 1137 (App. Ct. of Ill. 1999); *Commonwealth v. Young*, 748 A.2d 166 (Penn. 2000) (on reargument); *Lilly v. Commonwealth*, 523 S.E. 2d 208 (Va. 1999); *Williams v. Commonwealth*, 528 S.E. 2d 166 (Va. Ct. of App. 2000) (on rehearing en banc); *Rankins v. Commonwealth*, 523 S.E. 2d 524 (Va. Ct. of App. 2000); *Aguilar v. Commonwealth*, 1999 WL 1256575 (Va. Ct. of App. 1999) (not for publication).

A second group of cases further demonstrate the impact of *Lilly*. In these cases the Court recognized that the trial Court created constitutional error in admitting hearsay solely on the ground the statement was against the declarant's penal interest. While the lower courts still affirmed the convictions in each case, it was only because the constitutional error was harmless beyond a reasonable doubt. The cases are: *United States v. Taylor*, 188 F.3d 505, 1999 WL 617896 (4th Cir. 1999) (unpublished); *Anderson v. Page*, 161 F. Supp. 2d 770 (N.D. Ill. 1999) (habeas corpus); *York v. State*, 528 S.E. 2d 823 (Ct. of App. of Ga. 2000); *State v. Lopez*, 993 P.2d 727 (N.Mex. 1999); *State v. Harris*, 525 S.E. 2d 208 (Ct. of App. of N. Car. 2000); *State v. Madrigal*, 721 N.E. 2d 52 (Ohio 2000); *State v. Troupe*, 2000 WL 336520 (Ct. of App. of Ohio 2000) (unpublished); *State v. Thompson*, 2000 WL 310461 (Ct. of App. of Ohio 2000) (unpublished); *State v. Dinkins*, 529 S.E. 2d 557 (Ct. of App. of S. Car. 2000); *Dearing v. Commonwealth*, 524 S.E. 2d 121 (Va. 2000); *Pace v. Commonwealth*, 2000 WL 558622 (Ct. of App. of Va. 2000) (not for publication); *Moltz v. Commonwealth*, 2000 WL 527730 (Ct. of App. of Va. 2000) (not for publication).

Lilly was a tenfold beacon in the night illuminating the path for trial courts. As the above cited cases demonstrate, the lower courts have had no trouble understanding *Lilly*. The Nebraska Supreme Court wrote a reasoned opinion applying the lessons it learned from *Lilly* to the instant case.

CONCLUSION

The Nebraska Supreme Court correctly decided the case and the decision needs no further review.

The Petition for the Writ of Certiorari should be denied.

Respectfully submitted,

J. William Gallup, #11425
1001 Farnam Street, #300
Omaha, NE 68102
(402) 341-0700